Supreme Court, U.S.
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No. 04- 04 395

In the
Supreme Court of the United States

CHIPPEWA TRADING COMPANY,
Petitioner,

v.

JENNIFER M. GRANHOLM; and,
JUNE SUMMERS HAAS
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. For purposes of comity, whether a state remedy is plain, adequate and complete, when there is a facial due process challenge in federal court to the remedy provisions of a state tobacco tax statute, and state officials admit in federal court to utilizing procedural tactics to avoid a decision on the merits in state court?

2. In the event a state remedy is plain, adequate and complete, whether the district courts may decline on the basis of comity, to hear Indian claims against state officials for a continuing pattern of seizure and forfeiture of interreservation Indian trade in tobacco, when the relief requested includes prospective injunctive relief to end a continuing violation of federal law, including *Art. II, Treaty with the Chippewa, 1842*, in which the federal government promised the exclusive application of federal law to Indian trade in return for ceded land?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW AND CORPORATE DISCLOSURE STATEMENT

Petitioner

Petitioner is Chippewa Trading Company, an Indian corporation chartered and organized under the laws of the Keweenaw Bay Indian Community, a federally recognized Indian tribe, on the L'Anse Federal Indian Reservation. The corporation is chartered and organized as a subordinate organization of the Tribe. The Tribe in turn is organized as a federal corporation under Section 17 of The Act of June 18, 1934. Petitioner was the plaintiff in the District Court, and appellant in the Court of Appeals.

Respondents

At the time of the actions complained of in 2001 and 2002, Jennifer M. Granholm was the Attorney General of the State of Michigan, and June Summers Haas was the Commissioner of Revenue of the State of Michigan. Jennifer M. Granholm has since been elected Governor of the State of Michigan, and the Department of Treasury of the State of Michigan has been reorganized. Granholm and Haas were defendants in the District Court, and appellees in the Court of Appeals. Upon issuing the Sixth Circuit's decision, the Sixth Circuit, *sua sponte*, substituted Michael Cox for Jennifer M. Granholm, and Jay B. Rising for June Summers Haas. Petitioner objects to the Sixth Circuit's substitution of the parties, on the basis that Granholm and Haas were plead responsible in their official capacities for their actions in violation of federal law.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a Writ of Certiorari to review the judgment rendered in this case by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit Court of Appeals opinion was issued April 19, 2004, and is reported at 365 F.3d 538 (6th Cir. 2004). (App. B at 3a). An order denying rehearing *en banc* was issued June 22, 2004. (App. A at 1a). The unreported decision of the District Court, by Judge David W. McKeague, was rendered on March 28, 2003, and granted respondents' motion to dismiss on the basis of comity, dismissed petitioner's claims, and denied petitioner's motion for preliminary injunction as moot. (App. C at 19a). A judgment order was issued on March 28, 2003. (Appendix C at 32a).

STATEMENT OF JURISDICTION

The Sixth Circuit Court of Appeals entered its judgment on April 19, 2004, and denied a timely filed petition for rehearing *en banc* on June 22, 2004. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. 1254(1).

TREATY, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following federal treaty, constitutional, and statutory provisions, which are reproduced in the Appendix at App. H at 74a, *et. seq.*:

A. The Treaty with the Chippewa, 1854.
B. Indian Commerce Clause
C. Supremacy Clause
D. Due Process Clause
E. 28 U.S.C. 1362
F. The Federal Corporate Charter of the Tribe.
G. The Tribe's Constitution.

STATEMENT OF THE CASE AND FACTS

The facts are undisputed. Petitioner was formed by the Keweenaw Bay Indian Community (the Tribe), by Tribal resolution in 1997 as a subordinate organization of the Tribe, pursuant to Article VI, Section 1(o), of the Tribe's Constitution. (App. D at 34a). The Tribe is federally recognized and is organized as a Section 17 federal corporation (App. F at 43a). The Chippewa enjoy a choice of law treaty covenant providing for the exclusive application of federal law to their trade and commerce, guaranteed by the federal government in exchange for ceded land, under the terms of Article II of *The Treaty with the Chippewa, 1842* (the Treaty). (App. E at 36a).

Leading up to and during respondent Granholm's political race for Governor, and during tax compact negotiations with statewide Michigan tribes, respondents interfered with petitioner's interreservation tobacco trade by seizing and forfeiting tobacco products purchased by petitioner from an

on-reservation Indian seller in New York, during delivery on August 31, 2001, by an on-reservation Indian shipper from New York. (App. C at 20a). Numerous seizures and forfeitures of petitioner's interreservation tobacco trade by respondents continued in 2002. The basis of the seizures and forfeitures were petitioner's alleged purchase of unstamped tobacco products, in violation of a state law, the Michigan Tobacco Products Tax Act (the Act), MCL 205.421 *et. seq.* This interference by the respondents occurred indiscriminately to any shipment of unstamped Indian tobacco to any Indian entity on any Indian reservation statewide, amounting to a state-wide reservation embargo in 2001 and 2002.

Petitioner contested the August 31, 2001 seizure and forfeiture in a state case under the Act, which was involuntarily dismissed by the state court. Petitioner contested numerous 2002 seizures and forfeitures in a number of state court cases under the Act, which were later voluntarily dismissed by petitioner.

Petitioner filed the instant action in the District Court below challenging the seizure and forfeiture provisions of the Act on its face on 42 U.S.C. 1983 and federal due process grounds, after the state court dismissal of the 2001 case. Petitioner then amended the federal case to also assert Article II of the Treaty, and the Supremacy Clause, and the Indian Commerce Clause of the federal constitution, to invalidate application of the Act against petitioner. One of the arguments asserted in support of the due process challenge was respondents' use of procedural obstruction in the state cases to avoid reaching the merits, which was admitted on the record by counsel for the respondents at a federal motion hearing.

On March 28, 2003, the District Court issued its decision to abstain, granted respondents' motion to dismiss on the basis of comity, dismissed petitioner's claims, and denied petitioner's motion for preliminary injunction as moot. (Appendix C at 19a). At the time of District Court abstention, petitioner was seeking a declaratory judgment, and the relief sought included damages, and preliminary and permanent injunctive relief to end the ongoing violation of federal law.

On April 19, 2004, the Sixth Circuit Court of Appeals affirmed the District Court, (Appendix B at 3a), and on June 22, 2004, issued an order denying rehearing *en banc*. (Appendix A at 1a).

REASONS FOR GRANTING THE WRIT

This case of federal treaty and constitutional import is one of first impression for the court. The case involves an important question of federalism, and ending ongoing interference by state officials with sovereign interreservation Indian trade, in direct contravention of a federal treaty guaranteeing exclusive application of federal law to Indian trade, in return for ceded land. The Sixth Circuit's published decision creates bad precedent, creates a division with the Ninth and Tenth Circuits, and shows inconsistent application of comity by the District Courts within the Sixth Circuit.

I. For purposes of comity, a state remedy is not plain, adequate and complete, when the remedy provisions of a state statute violate federal due process, and procedural tactics are utilized by the sued state officials to avoid a decision on the merits in state court.

The Sixth Circuit's upholding of the District Court's finding that the state remedy was plain, adequate, and complete, is contrary to this Court's notion of comity and should not be allowed to stand as precedent.

The seizure and forfeiture provisions of the Act includes the statutory remedy, and was attacked as violating federal due process on its face. It was backwards reasoning for the District Court to find a plain, adequate, and complete state remedy, when not deciding the federal facial due process challenge to the statutory remedy, and failing to consider the respondents' admission to the District Court that respondents were utilizing procedural obstruction tactics to avoid a decision on the merits in state court.

The District Court and the Sixth Circuit simply did not address this on the record admission by respondents' counsel, which was argued in petitioner's brief on appeal:

> THE COURT: And in fact, my guess is that you all are probably doing everything procedurally you can think of to try to prevent the Court from ever getting to the merits on that case; am I right?
>
> MR. LEVY: That is correct, Your Honor.

The District Court abdicated its duty to decide the case, and shows how comity is inconsistently used within the Sixth Circuit.

In Tennessee in 1972, in a non-Indian case, a District Court decided abstention did not apply to a similar facial due process challenge to a state forfeiture law and decided the case on the merits. *Fell v. Armour*, 355 F. Supp. 1319 (Md. D. Tenn. 1972)(grant of injunctive relief to bar state officials' enforcement of seizure and forfeiture provisions of a state drug control law in violation of federal due process on its face).

Fell was the easier case, because there were no obstruction tactics by state officials, admitted or alleged, and the District Court refused to abstain.

II. The Sixth Circuit's decision that petitioner must sue state officials in state court to enforce a federal treaty and other federal laws, with overwhelming federal interests at stake, to end a continuing violation, is contrary to principles of federalism enunciated by this Court.

Petitioner brought claims to, among other things, enforce a federal treaty in the District Court to enjoin a continuing violation by state officials. The federal interests in this case are overwhelming.

Article II, *The Treaty with the Chippewa, 1842*, 7 Stat. 591, provides:

> *The Indians stipulate for the right of hunting on the ceded territory*, with the other usual privileges of occupancy, until required to remove by the President of the United States, *and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress*. [emphasis added]

Congress has not ordered otherwise. This Court has held that, ambiguity, if any, in an Indian treaty, must be construed liberally in favor of the tribe. *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985). The Treaty is the law of the land under the Supremacy Clause, and by their continued actions, respondents have defied this federal treaty clause with impunity.

The District Court found, without explanation or rationale, that the injunctive relief requested "would unduly interfere with the fiscal operations and independence of the State of Michigan and its system of taxation", and was therefore barred by principles of comity, citing *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943) and *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100 (1981).

In affirming the District Court, the Sixth Circuit decision is contrary to this Court's decision in *Moe, Sheriff v. Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463 (1976). In *Moe*, this Court held that *Great Lakes Dredge* did not apply to Indians where the United States could have brought the kind of claims as trustee, but for whatever reasons were not so brought. *Moe*, 425 U.S., at 470-475, citing *Heckman v. United States*, 224 U.S. 413 (1912)(U.S. sued to cancel conveyances by Cherokee allottees-grantors, who were not parties, as violative of federal restrictions upon the Indians' power of alienation), and *United States v. Rickert*, 188 U.S. 432 (1903)(upholding right of the government to seek injunctive relief against county taxation directed at tools used to cultivate land allotted to and occupied by the Sioux Indians).

This trustee principle was used as recently as 1979 by the federal government against the State of Michigan to enforce

a treaty provision in which, like the present case, the relief requested interfered with Michigan's regulatory and tax system. *United States v. State of Michigan*, 471 F. Supp. 192, 265 (W.D. Mich. 1979)(Chippewa Indian treaty hunting and fishing rights apply off-reservation on ceded land in Michigan). Under this case, state officials do not have jurisdiction to tax and regulate under state natural resource laws Indians exercising their hunting and fishing treaty rights off-reservation on ceded land.

The Sixth Circuit's decision is contrary to this Court's historical exercise of Article III judicial power in Indian affairs off-reservation but within a state. *United States v. Forty-Three Gallons of Whiskey, Etc.*, 93 U.S. 188 (1876)(Upholding forfeiture to federal government of alcohol, pelts and other goods, seized from a white off-reservation in Minnesota to be sold on-reservation, in violation of treaty and Act of Congress); *United States v. Holliday*, 70 U.S. 407 (1865)(Upholding federal indictment of white for selling liquor to Saginaw Chippewa Indian off-reservation in Gratiot County, Michigan, in violation of Act of Congress).

The Sixth Circuit's decision is also contrary to this Court's decisions in *Ex parte Young*, 209 U.S. 123 (1908) and *Green et al. v. Mansour, Director, Michigan Department of Social Services*, 474 U.S. 64, 68 (1985), which permits federal prospective relief against state officials to end a continuing violation of federal law.

This Court should not allow this challenge by state officials to the power of the federal courts to stand as precedent.

III. The Sixth Circuit's decision strips Indian tribes of Congressionally granted corporate and constitutional power to create subordinate organizations with the power to seek redress in the federal courts.

The Sixth Circuit mistakenly distinguished *Moe* and *Winnegago*. The Sixth Circuit holding that petitioner cannot avail itself of federal jurisdiction pursuant to 28 U.S.C. 1362, because petitioner is not an "Indian tribe or band" within the meaning of section 1362, stripped petitioner, and indeed all Indian tribes, of Congressionally granted power to create subordinate organizations with federal corporate power to seek relief in the federal courts.

Congressional grants of power to Indian tribes include the means to implement the federal government's policy of fostering Indian self-government and economic development in Indian Country.

The Sixth Circuit's decision stripped federal corporate power from petitioner. Congress granted federal corporate status to the Tribe pursuant to Section 17 of The Act of June 18, 1934. Article 1 of the Tribe's federal corporate charter provides:

> In order to further the economic development of the Keweenaw Bay Indian Community of the L'Anse Reservation in Michigan by conferring upon the said Community certain rights, powers, privileges, and immunities ... the aforesaid community is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Keweenaw Bay Indian Community".

Article 5 provides corporate powers. Article 5(e) of the charter provides:

> To engage in any business that will further the economic well-being of the members of the Community or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of the Charter.

The Sixth Circuit's decision further stripped petitioner of constitutional power granted by Congress.

Petitioner was created as a subordinate organization of the Tribe, a section 17 federal corporation, pursuant to the Tribes' Constitution, created and approved pursuant to Act of Congress. Article VI, Sec. 1, cl. O, of the Tribe's Constitution provides:

> The Tribal Council shall have the power, subject to any limitations imposed by the Statutes of the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached By-laws: ... To charter subordinate organizations for economic purposes ....

IV. The Sixth Circuit's decision creates a split with the Ninth and Tenth Circuits, and shows inconsistent use of comity by the District Courts within the Sixth Circuit.

The Sixth Circuit decision created a split with the Ninth Circuit on the applicability of comity in a 1983 action. *Winn v. Killian*, 307 F.3d 1011 (9th Cir. 2002) (Comity does not apply to a 1983 suit challenging the validity of a state tax credit under the Establishment Clause). *Winn* was recently

affirmed by this Court in *Hibbs v. Winn*, 2004 U.S. Lexis 4175 (U.S., June 14, 2004), which was decided after the Sixth Circuit's decision. Now the Sixth Circuit's decision is contrary to this Court's recent decision upholding *Winn*.

The Sixth Circuit decision erroneously distinguished *Winn* on the basis that the object of challenge was a state tax credit, which if successful, would result in the state collecting further tax revenue. It is disingenuous to distinguish *Winn* on the basis of the attacked state statutory provision, be it a tax or tax credit, since the basis of the state invoking comity in the first place is not loss of tax income, but interference in a state tax and regulatory scheme. Although there is no tax credit at issue in this case, this case is easier than *Winn*, because the state has no jurisdiction under the Treaty in the first place to levy or credit the tax.

The Sixth Circuit decision creates a split with the Tenth Circuit. On August 28, 2003, the United States Court of Appeals for the Tenth Circuit affirmed *Winnebago Tribe of Neb. v. Stovall,* 205 F. Supp. 2d 1217, and, 216 F. Supp. 2d 1226. *See, Winnebago Tribe of Neb. v. Stovall*, 341 F. 3d 1202 (10th Cir. Kan. 2003) (Finding no error in district court's declining to abstain under the *Younger* doctrine, no abuse of discretion in granting injunctive relief, and no error in granting preliminary injunction over claims of Eleventh Amendment immunity, where the District Court granted Indian plaintiffs' motions for a temporary restraining order and later temporary injunction, to stay and return state seizures of Indian property and stay state criminal charges against Indian individuals, relating to alleged violations of state gasoline tax.)

Winnebago also involved Indian to Indian trade. *Winnebago* was the easier case, because *Winnebago* involved

use of federal injunctive powers to return seized Indian property and stay state criminal charges against Indians brought by state officials in state court.

Another similar Tenth Circuit Indian case has recently been handed down, again in favor Indian trade, but on preemption grounds. *Prairie Band Potawatomi Nation v. Steven S. Richards, Secretary of the Kansas Department of Revenue*, No. 03-3218, (10th Cir. August, 11, 2004) (Kansas fuel tax invalidated as applied to non-Indian distribution of gasoline to tribe, because the balance of tribal, federal, and state interests preempt state taxation as a matter of law.)

The Sixth Circuit's case shows inconsistent use of comity by the District Courts in the Sixth Circuit on Indian cases, besides in *Fell*.

In Michigan in 1998, District Court Judge McKeague ruled on the merits in a case similar to petitioner's instant case, and was upheld on the merits on appeal to the Sixth Circuit. *Baraga Products, Inc. v. Michigan Commissioner of Revenue*, No. 97-1449 (6th Cir. 1998)(unpublished)(Corporation organization under the laws of a state cannot assert rights of its shareholder, an on-reservation Indian).

Baraga Products was decided by the same District Court Judge, involved the same Tribe, the same reservation, the same Treaty, and the relief requested also involved injunctive relief and the Michigan tax system (Michigan Single Business Tax).

There is no appreciable difference between a state business income tax scheme or a state tobacco tax scheme sufficient to justify invoking comity in one case and not the

other. This is a wildly different application of comity by the same federal judge.

This Court has an inherent interest in securing consistent application of enunciated principles of federalism to prevent the District and Circuit Courts from substituting their own notions of federalism.

CONCLUSION

This case cries out for this Court to take. It is a hard case.

The Sixth Circuit's notions of federalism, abstention, and comity, in favor of state courts have no place as precedent where this decision is contrary to this Court's enunciated principles, the federal treaty, constitutional, statutory, and Congressional policy interests towards Indians are overwhelming, a split is created between Circuits, and shows inconsistent application in the District Courts.

This is a hard case because a decision on the merits in favor of petitioner would enforce a federal choice of law term in a federal treaty, long forgotten by non-Indians, but not forgotten by the Chippewa, whose territory around them was ceded to the federal government by their ancestors in exchange for solemn federal guarantees in the Treaty.

This is a hard case because a decision on the merits in favor of petitioner would breath life into trading relations of Indians, which the Chippewa have long known to be the truth of the Treaty, but the respondents deny and obstruct.

This is a hard case because respondent Granholm was State Attorney General at the time of her actions, is now

sitting Governor, and enforcement action occurred during her political race and state-wide tax compact negotiations.

This is a hard case that made bad law in the Sixth Circuit. This Court has an interest in preserving its enunciated principles of federalism and not letting this case stand as precedent.

Letting the Sixth Circuit decision stand will lead to the following untenable results:

1. The District Courts will have wider latitude of discretion to abstain from exercise of jurisdiction with wildly inconsistent results.

2. The principles of federalism enunciated by this Court will have been heavily tilted in favor of the states in cases involving overwhelming federal interests and a state merely invokes an impact on its tax system.

3. Questions involving treaties entered into by the federal government will be required to be decided in state courts where the impact is on a state tax system.

4. The judiciary branch is seriously diluting its power to order injunctive relief against state officials for an ongoing violation of federal law.

5. Congress' statutory grants of section 17 federal corporation and tribal constitutional power to Indian tribes to foster self-government and economic development in Indian Country will be seriously eroded.

6. The federal government's power to exercise its trustee relationship in federal court on behalf of Indians will be

jeopardized when a state merely invokes an impact on its tax system.

7. By merely invoking its state tax system, state officials will be free to declare open season on Indian treaty rights during state election seasons and during tax compact negotiations without the prospect of the federalism check and balance of the federal courts.

8. State officials will be free to procedurally obstruct state cases even when a state remedial statutory scheme is attacked on federal due process grounds.

For the above reasons, Petitioner respectfully requests this Court to grant the instant Petition for Writ of Certiorari to review the judgment rendered in this case by the U.S. Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 03-1445

[Filed June 22, 2004]

CHIPPEWA TRADING CO., AN INDIAN CORPORATION CHARTERED AND ORGANIZED UNDER THE LAWS OF THE KEWEENAW INDIAN COMMUNITY,
Plaintiff-Appellant,

v.

MICHAEL A. COX, AN INDIVIDUAL IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF MICHIGAN, ET AL.,
Defendants-Appellees.

BEFORE: BOGGS, Chief Judge; BATCHELDER and SUTTON, Circuit Judges.

ORDER

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Leonard Green, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 03-1445

[Filed April 19, 2004]

CHIPPEWA TRADING CO., an Indian corporation chartered and organized under the laws of the Keweenaw Bay Indian Community, Plaintiff-Appellant,

v.

MICHAEL COX, an individual in his official capacity as Attorney General of the State of Michigan; JAY B. RISING, an individual in his official capacity as Treasurer of the State of Michigan, Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Michigan at Marquette
No. 02-00068
David W. McKeague, District Judge

Before: BOGGS, Chief Judge; and BATCHELDER and SUTTON, Circuit Judges.

OPINION

BOGGS, Chief Judge. Chippewa Trading Co. appeals from the dismissal of its action under 42 U.S.C. § 1983, challenging the constitutionality of several aspects of Michigan's Tobacco Products Tax Act (TPTA), Mich. Comp. Laws § 205.421 *et seq*. The district court concluded that principles of comity counseled it to abstain from hearing Chippewa's challenge to a state tax scheme, as Chippewa had a "plain, adequate, and complete" remedy available in the courts of Michigan. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981). We affirm.

I

Chippewa is a corporation chartered under the laws of the Keweenaw Bay Indian Community (a federally recognized tribe) and located on an Indian reservation in Michigan. The events that gave rise to this case began on August 31, 2001, when the Michigan State Police stopped a truck containing tobacco products that were being shipped to Chippewa by International Native Company (INC), an Indian company located on a reservation in New York. The truck's driver was Andrew Arch, the president of another Indian shipping company. The state police seized the tobacco products on Arch's truck because they carried no tobacco tax stamps, which is a violation of TPTA.

When such a seizure occurs, the TPTA statutory scheme requires police to give notice to "the person from whom the seizure was made." Mich. Comp. Laws § 205.429(3). The

statute allows "any person claiming an interest in the property" to challenge the seizure in an administrative hearing, but such a challenge must be made within "10 business days after the date of service of the [notice]." *Ibid.* After this deadline, "the property seized [is] considered forfeited to the state by operation of law." *Ibid.* The result of an administrative hearing challenging a TPTA seizure may be appealed to a Michigan circuit court. *See* § 205.429(4).

After seizing Arch's shipment, the state police sent written notice of the seizure to INC, the shipper, whom they believed to be the owner of the shipment. In fact, Chippewa, the buyer, had prepaid for the goods. No written notice was sent to Chippewa. However, Chippewa received actual notice of the seizure (from Arch) within four days after it occurred. *Chippewa Trading Co. v. Granholm,* No. 2:02-CV-68, 2003 U.S. Dist. LEXIS 10790, at *3 (W.D. Mich. Mar. 28, 2003). The only party to contest this seizure at the administrative level was INC, which was represented by the same attorney who represents Chippewa in this federal proceeding. In October 2001, the administrative referee concluded that the products seized from Arch's truck were contraband that should be forfeited to the state.

Chippewa then stepped in and appealed the referee's decision in Michigan's 12th Circuit Court. It argued that the notice provisions of TPTA violate the Fourteenth Amendment's Due Process Clause because they do not require police to notify the *owner* of alleged contraband that its property has been seized, only the person from whom the seizure is made. The state court dismissed this action on February 8, 2002, on the ground that Chippewa lacked standing.

In January 2002, while that appeal was still pending in the 12th Circuit Court, the State Police seized another shipment of tobacco products without stamps *en route* to Chippewa. Chippewa challenged this second TPTA seizure at the administrative level, lost, and appealed that decision to Michigan's 41st Circuit Court. On September 4, 2002, the 41st Circuit Court held a scheduling hearing on the appeal and ordered that Chippewa's due process claim would be heard on October 11, 2002. However, shortly thereafter, Chippewa voluntarily dismissed the action in the 41st Circuit Court.

Meanwhile, in April 2002, Chippewa filed the present action in federal district court, challenging the seizure from Arch in August 2001. Chippewa's original complaint sought declaratory and injunctive relief under 42 U.S.C. § 1983, plus attorney's fees. Its only claim was that the TPTA forfeiture scheme should be enjoined as a violation of due process, because of the notice defects that Chippewa had alleged in the 12th Circuit Court proceeding. In October 2002, Chippewa filed a supplemental brief in support of summary judgment that raised further constitutional claims: namely, that the application of TPTA to an Indian entity such as Chippewa violated the Supremacy Clause, U.S. Const., art. VI, cl. 2, the Indian Commerce Clause, U.S. Const., art. I, § 8, cl. 3, and the terms of the federal government's 1842 Treaty with the Chippewa, 7 Stat. 591.

The State[1] moved to dismiss Chippewa's federal action on

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[1] We will refer to the defendants, state officials sued in their official capacities, as the State. Defendant Cox has been automatically substituted for his predecessor, Jennifer M. Granholm, pursuant to Fed. R. App. P. 43(c)(2). Plaintiff's complaint also named June Summers Haas as a defendant in her official capacity, at the time, as Commissioner of Revenue in

the grounds that the district court lacked jurisdiction under the Tax Injunction Act, the Eleventh Amendment, and principles of comity. The district court granted the State's motion on the basis of comity, without addressing the other proposed bases for dismissal. It held that because "the relief requested, invalidation of and/or injunction against all or part of the TPTA, would unduly interfere with the fiscal operations and independence of the State of Michigan and its system of taxation," dismissal was proper. *Chippewa*, 2003 U.S. Dist. LEXIS 10790 at *10. The court further held that Chippewa's

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Michigan's Department of the Treasury. However, Michigan has recently abolished the position of Commissioner of Revenue. The Commissioner's duties with respect to tax collection have reverted to the state's Treasurer, in whom they originally resided, and who possesses the power to delegate such authority by statute. *See* Mich. Comp. Laws § 205.35. We have accordingly substituted Jay B. Rising, the current Treasurer, for Ms. Haas.

In our view, Fed. R. App. P. 43(c)(2) confers on the courts of appeals the power and obligation to look beyond an alteration in title or transfer of authority during the pendency of an appeal, and to substitute the new official who succeeds to the relevant responsibilities of a former official who was a party. Such authority has long been recognized under Fed. R. Civ. P. 25(d), the virtually identical rule that governs the automatic substitution of public officials in proceedings in the federal district courts. *Air Line Pilots Ass'n, Intern. v. Civil Aeronautics Bd.*, 242 U.S. App. D.C. 233, 750 F.2d 81, 87 (D.C. Cir. 1984); *Wright v. County Sch. Bd. of Greensville County, Va.*, 309 F. Supp. 671, 677 (E.D. Va. 1970), *rev'd on other grounds sub nom. Wright v. Council of City of Emporia*, 442 F.2d 570 (4th Cir. 1971), *rev'd*, 407 U.S. 451, 92 S. Ct. 2196, 33 L. Ed. 2d 51 (1972); *Porter v. Am. Distilling Co.*, 71 F. Supp. 483, 489 (S.D.N.Y. 1947) ("The title of the individual office is of no importance, if, in fact, the powers and duties of the predecessor have been conferred upon the successor.") (quotation marks omitted).

case did not implicate the exception to the comity doctrine that applies when there is no "plain, adequate and complete" remedy available at state law. *Id.* at *11 (citing *Fair Assessment*, 454 U.S. at 116). The court noted that the state offered two avenues for relief: First, TPTA itself provides an administrative procedure to challenge forfeitures. Second, Michigan's courts are authorized to hear and decide constitutional challenges to state tax laws, though they cannot prospectively enjoin the assessment or collection of a tax. *See id.* at *12-13.

Chippewa timely appealed the district court's order to this court. Our review of a district court's decision on abstention is *de novo*. *Baskin v. Bath Twp. Bd. of Zoning Appeals*, 15 F.3d 569, 571 (6th Cir. 1994).

II

A

As the district court recognized, Chippewa's action implicates a broad federal common-law principle of comity that governs constitutional challenges to state tax administration. This principle, which stems chiefly from *Fair Assessment* and *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 63 S. Ct. 1070, 87 L. Ed. 1407 (1943), prohibits "taxpayers . . . from asserting § 1983 actions against the validity of state tax systems in [the lower] federal courts." *Fair Assessment*, 454 U.S. at 116. In such cases, a federal court should normally abstain from hearing the action as long as there is a "plain, adequate, and complete" remedy available to the plaintiff in state court. *Ibid.* While this comity principle reflects some of the same concerns that led Congress

to enact the Tax Injunction Act, 28 U.S.C. § 1341,[2] it stands on its own bottom, and extends to cases seeking monetary damages as well as injunctive or other equitable relief. *Fair Assessment*, 454 U.S. at 110; *In re Gillis*, 836 F.2d 1001, 1006 (6th Cir. 1988) (comity principle is "substantially broader" than bar imposed by Tax Injunction Act). At the same time, relief in federal court remains potentially available in such cases through direct review by the United States Supreme Court of any final state court judgment on a constitutional challenge to a tax. *Fair Assessment*, 454 U.S. at 116.

Previous holdings make clear that Chippewa's suit threatens a level of interference with Michigan's tax scheme that is enough to implicate the comity principle. *See id.* at 114-15 (holding that comity barred § 1983 suit against county tax assessors challenging alleged overassessment of the value of improved real estate; suit would have chilling effect on county tax officials); *Gillis*, 836 F.2d at 1008 (comity barred federal declaratory action claiming that Kentucky tax authorities violated equal protection by systematically underassessing property in the form of coal, oil, and gas interests). Here, Chippewa's Due Process Clause claim challenges the forfeiture provisions of TPTA on their face. This claim seeks to disable the basic enforcement mechanism of the statute. If that were not enough, Chippewa's later-added claims under the Indian Commerce Clause and the Treaty with the Chippewa call into question the State's ability to exact tobacco product taxes from Chippewa, and, by

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[2] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." *Ibid.*

extension, from similar Indian businesses. Such challenges to the applicability of state tax laws to a class of potential taxpayers also implicate comity. *See Great Lakes*, 319 U.S. at 294, 297 (holding that comity barred federal declaratory action on behalf of Louisiana barge owners claiming that federal maritime law pre-empted Louisiana's business excise tax as applied to them); *see also ACLU Found. of La. v. Bridges*, 334 F.3d 416 (5th Cir. 2003) (holding that Tax Injunction Act barred federal suit challenging state's grant of tax exemptions to religious institutions).[3]

The Supreme Court has granted certiorari to review the Ninth Circuit's decision in the *Winn* case. *Hibbs v. Winn*, 156 L. Ed. 2d 703, 124 S. Ct. 45 (2003).

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[3] We are cognizant that in *Winn v. Killian*, 307 F.3d 1011 (9th Cir. 2002), the Ninth Circuit Court of Appeals held that neither the Tax Injunction Act nor the broader comity principle of *Fair Assessment* applied to bar a taxpayer's federal suit challenging Arizona's grant of tax credits to parochial schools. *Id.* at 1018-20. Despite the Supreme Court's broad articulation of the comity principle in *Fair Assessment*, *see, e.g.*, 454 U.S. at 116 ("We hold that taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts."), the *Winn* court concluded that comity did not apply to a § 1983 suit challenging the validity of a state tax credit in federal court, since, if successful, the suit would result in a state collecting more tax revenue than it otherwise would. 307 F.3d at 1018-20. However, even if *Winn* were not contrary to our own circuit's precedent in *Gillis*, *see Winn v. Killian*, 321 F.3d 911, 914-15 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing en banc) (noting the conflict), as well as questionable in light of *Fair Assessment* itself, it still would not provide support for Chippewa's position here. Chippewa's suit does not challenge a tax credit, but seeks to enjoin the State from collecting tobacco taxes on Chippewa's shipments.

B

Chippewa argues that abstention is nevertheless improper because Chippewa lacks a "plain, adequate, and complete" state remedy by which to pursue its federal challenge to Michigan's tobacco tax scheme. *Fair Assessment*, 454 U.S. at 116; *Gillis*, 836 F.2d at 1009. The Supreme Court has held that there is "no significant difference" between the Tax Injunction Act's requirement of a "plain, speedy, and efficient remedy" and the judge-made requirement that there be a "plain, adequate, and complete" state remedy in order for the principle of comity to apply. *Fair Assessment*, 454 U.S. at 116 n.8. In both cases the standard "requires a state court remedy that meets certain minimal *procedural* criteria." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981) (emphasis in original); *Gillis*, 836 F.2d at 1010. State "remedies are plain, adequate, and complete if they provide the taxpayer with a full hearing and judicial determination at which the taxpayer may raise any federal constitutional objections to the tax." *Ibid.*

Chippewa contends that the due process problems that it identifies in TPTA's notice provisions obstruct meaningful review of improper seizures, and thus deprive it of a plain, adequate, and complete remedy.

We disagree. Chippewa has not meaningfully contested the district court's conclusion that it has an independent state remedy, quite apart from the TPTA administrative procedure, in the form of a direct constitutional challenge to the tax scheme in state court. Such a constitutional challenge may be brought in the Michigan circuit courts in the first instance. *Kostyu v. Dep't of Treasury*, 170 Mich. App. 123, 427 N.W.2d 566, 568 (Mich. Ct. App. 1988); *Joy Mgmt. Co. v. City of Detroit*, 440 N.W.2d 654, 657, 176 Mich. App. 722

(Mich. Ct. App. 1989), *overruled in part on other grounds*, *City of Detroit v. Walker*, 445 Mich. 682, 520 N.W.2d 135, 142 (1994); *see Smith v. Cliffs on the Bay Condominium Ass'n*, 463 Mich. 420, 617 N.W.2d 536 (Mich. 2000) (hearing challenge to notice provisions of tax statute on federal and state due process grounds). A plaintiff may also bring a § 1983 injunctive action in the Michigan courts against state officials pursuant to the *Ex Parte Young* doctrine. *See Jones v. Powell*, 462 Mich. 329, 612 N.W.2d 423, 425 (Mich. 2000); *Bay Mills Indian Community v. State*, 626 N.W.2d 169, 175, 244 Mich. App. 739 (Mich. Ct. App. 2001). The availability of a § 1983 action in state court significantly supports federal court abstention under the comity doctrine. *Fair Assessment*, 454 U.S. at 116-17; *Long Island Lighting Co. v. Town of Brookhaven*, 889 F.2d 428, 432-33 (2d Cir. 1989).

To the extent that Chippewa argues that the alleged notice defects in the TPTA seizure process will obstruct it from bringing suit in Michigan courts by one of these avenues, and that the interaction between the relevant administrative and legal frameworks thereby renders the state court remedies inadequate, we are not persuaded by this argument either. It is true that the TPTA administrative scheme combines somewhat limited notice provisions - only the person from whom a seizure is made need be sent a written notice - with a short deadline: seizures must be contested within 10 business days of service of the notice. But the fact remains that the person from whom the contraband was seized (here, Arch, the truck driver) is extremely likely to notify his superiors of the seizure in a timely fashion.

Even in a situation like the present case, where the party who would arguably bear the financial risk of the seizure does not employ the person from whom the seizure was made, it is

still highly probable that the party at risk will find out promptly. In all likelihood, the seizure will be discovered in time to contest it under TPTA, and it will unquestionably be discovered within the three-year Michigan statute of limitations period, Mich. Comp. Laws § 600.5805(10), that is borrowed for § 1983 claims, *see Carroll v. Wilkerson*, 782 F.2d 44 (6th Cir. 1986) (per curiam). When a shipment fails to arrive, or a delivery truck pulls up with no cigarettes in the trailer, a reasonable party in Chippewa's shoes will make rather prompt inquiries to find out what happened.[4] Indeed, that seems to have occurred here. Chippewa admitted to the district court that it received actual notice that its August 2001 shipment had been seized under TPTA within four days of the seizure.

We note in this connection that Michigan does not require exhaustion of administrative remedies before filing suit in circuit court when - as would be true of the claims Chippewa asserts here - the plaintiff's action raises only constitutional issues, which fall outside of the competence of administrative tribunals. *See Papas v. Mich. Gaming Control Bd.*, 257 Mich. App. 647, 669 N.W.2d 326, 334 (Mich. Ct. App. 2003) ("There is no sense in forcing a plaintiff to plod through the lengthy administrative process when only the courts have the authority to resolve the controlling constitutional issue.") (quotation marks omitted) (citing authorities). In *Gillis*, we held that a plain, adequate, and complete state remedy existed for plaintiff's equal protection challenge in the courts of Kentucky, in part because Kentucky law would not require the plaintiff to exhaust administrative

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[4] In case of doubt, a party like Chippewa can protect itself with contract, by requiring its shippers and other business counterparts to provide it with notice of any seizure.

procedures in order to raise his constitutional challenge. 836 F.2d at 1011. Similar reasoning applies here. We are also confident that Michigan would apply the same rule to a claim involving the application of a federal treaty, such as Chippewa's claim here under the 1842 Treaty with the Chippewa.

Federal courts are to take a narrow view of the "no plain, speedy, and efficient remedy" exception to the Tax Injunction Act. *California v. Grace Brethren Church*, 457 U.S. 393, 413, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982); *Amos v. Glynn County Bd. of Tax Assessors*, 347 F.3d 1249, 1256 (11th Cir. 2003). That exception, in turn, has been described by the Supreme Court as essentially equivalent to the "no plain, adequate, and complete remedy" exception that we must apply here. *Fair Assessment*, 454 U.S. at 116 n.8.[5] Here, the opportunity to raise its constitutional claims in state court plainly gives Chippewa "a full hearing and judicial determination" at which it may "raise any federal constitutional objections to the tax." *Gillis*, 836 F.2d at 1010. Thus, we hold that Chippewa's state remedies are plain, adequate, and complete under *Fair Assessment* and related case law.

III

Finally, Chippewa asserts that our comity analysis must reach a different result because Chippewa is an Indian

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[5] In *Rosewell*, the Supreme Court upheld as "plain, speedy, and efficient" a Cook County, Illinois, remedy for challenging tax assessments that required protestors to pre-pay their taxes. If successful, the taxpayers would receive their refund *without* interest after a typical delay of two years. *See* 450 U.S. at 510, 528.

corporation. Sifting the various arguments in Chippewa's briefs, we can say that the company wants us to reverse the district court's comity ruling on the authority of 28 U.S.C. § 1362; *Moe v. Confed. Salish & Kootenai Tribes*, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976); and *Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202 (10th Cir. 2003).

Moe involved facts similar in a number of respects to those here. An Indian tribe brought suit in federal district court challenging, *inter alia*, the application of Montana tobacco sales taxes and tobacco vendor licensing requirements to Indians on reservations. 425 U.S. at 466-69. The state argued that the Tax Injunction Act required federal court abstention. A three-judge district court disagreed, heard the case, and invalidated some of the tax provisions at issue. *Id.* at 469. The Supreme Court affirmed. It noted that a key statutory provision, 28 U.S.C. § 1362, provides that "the district courts shall have jurisdiction of all civil actions, *brought by any Indian tribe or band*. . . duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws or treaties of the United States." *Ibid.* (emphasis added). Because § 1362 was enacted after the Tax Injunction Act, the Court held that the Act did not apply to oust federal jurisdiction over the tribe's suit. *Moe*, 425 U.S. at 474-75.

In *Winnebago*, the Tenth Circuit upheld the district court's grant of a preliminary injunction against the State of Kansas, which sought to assess state fuel taxes on a fuel distributor corporation wholly owned by the Winnebago Tribe. Kansas had seized tribal property without notice and initiated criminal proceedings against the plaintiffs, who included members of the tribe and tribal officials. *Id.* at 1204. The Winnebago Tribe itself, along with the other plaintiffs, sued Kansas for declaratory and injunctive relief. *Ibid.* As relevant here, the

Tenth Circuit held that the district court was not required to abstain from hearing the suit under the doctrine of *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). *See Winnebago Tribe of Neb. v. Stovall*, 216 F. Supp. 2d 1226 (D. Kan. 2002). The Tenth Circuit agreed with the district court that "the second *Younger* requirement - implication of an important state interest - had not been met." *Winnebago*, 341 F.3d at 1204.

In *Winnebago*, the Tenth Circuit discussed neither the Tax Injunction Act nor the comity principle of *Fair Assessment*. It is likely that Kansas simply did not attempt to raise these authorities as a bar to hearing the Tribe's suit, for on the facts of the *Winnebago* case, they were clearly inapplicable in light of *Moe* and 28 U.S.C. § 1362.

However, both *Moe* and *Winnebago* must be distinguished from Chippewa's suit, because in both of those cases the plaintiff was an "Indian tribe or band." 28 U.S.C. § 1362. That is not the case here. The parties agree, and the district court found, that Chippewa is "an Indian corporation chartered under the laws of the Keweenaw Bay Indian Community, a federally recognized Indian tribe." *Chippewa*, 2003 U.S. Dist. LEXIS 10790 at *2.

Courts have held that, since the § 1362 exception to the Tax Injunction Act is limited by its terms to "civil actions brought by [a recognized] Indian tribe or band," it does *not* apply to suits by individual Indians or suits by private Indian corporations. *See Amarok Corp. v. State of Nev.*, 935 F.2d 1068 (9th Cir. 1991) (holding *Moe* not applicable to private, on-reservation, Indian-owned entity's suit challenging state taxation of work it performed on Indian trust land; Tax Injunction Act barred jurisdiction); *Dillon v. State of Mont.*, 634 F.2d 463 (9th Cir. 1980) (holding *Moe* not applicable to

Indians' § 1983 action asserting that they were immune from state personal income tax; Tax Injunction Act barred jurisdiction).

To be sure, it is reasonable to assume that § 1362 exempts suits from the *Fair Assessment* comity doctrine *to the same extent* that it exempts them from the Tax Injunction Act. As the Supreme Court observed in *Moe*, the statutory exception for Indian tribes in § 1362 was intended "to open the federal courts to the kind of claims that could have been brought by the United States as trustee, but for whatever reason were not so brought." 425 U.S. at 472. While there is little authority bearing on the specific applicability of *Fair Assessment* to the United States as trustee, it is generally true that "the presence of the United States as a plaintiff . . . militates strongly against the applicability of abstention." *United States v. Pub. Serv. Comm'n of Md.*, 422 F. Supp. 676, 679 (D. Md. 1976) (three-judge court) (declining to abstain under *R. Comm'n of Tex. v. Pullman*, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941)). We suspect the same would be true of a suit brought by a tribe that is within the ambit of § 1362. But even if this is so, it cannot aid Chippewa, because Chippewa is not an "Indian tribe or band," as the statutory exception requires. It is merely a private corporation organized under a tribal jurisdiction. Certainly Chippewa offers no reason to think the statutory exception should be construed *more* broadly with respect to comity than with respect to the Tax Injunction Act. Nor can we discern any such rationale. Therefore, Chippewa cannot invoke § 1362 as an exception to the limits imposed by the *Fair Assessment* comity principle. Accordingly, the comity analysis set out in Part II, *supra*, remains applicable to Chippewa's action, and the district court properly declined to hear the action.

IV

For the foregoing reasons, the district court's order is AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Case No. 2:02-cv-68

[Filed March 28, 2003]

CHIPPEWA TRADING COMPANY,
Plaintiff,

v.

JENNIFER M. GRANHOLM and
JUNE SUMMER HAAS,
Defendants.

DAVID W. McKEAGUE,
UNITED STATES DISTRICT JUDGE.

OPINION

This case involves a facial due process challenge to the Michigan Tobacco Products Tax Act ("TPTA"), M.C.L. 205.421 *et seq.*, brought by plaintiff Chippewa Trading Company ("Chippewa Trading") against defendants Jennifer M. Granholm and June Summers Haas. Now before the Court are plaintiff's motions for preliminary injunction (dkt. # 2)

and for summary judgment (dkt. # 4), as well as defendant's motion to dismiss (dkt. # 11). The Court held a hearing on these motions on July 26, 2002, taking them under advisement and ordering supplemental briefing on the issue of abstension. Both parties subsequently filed such briefs (dkts. # 23, 25). Plaintiff then filed a second supplemental brief, raising further constitutional challenges to the TPTA under the Supremacy Clause and the Indian Commerce Clause, to which defendant responded (dkts. # 33, 34). After a thorough review of the pleadings and arguments, the Court finds that defendants' motion to dismiss will be **GRANTED.** Consequentially, plaintiff's motions will both be **DENIED AS MOOT.**

I. Background

The facts of this case are not in dispute. On August 31, 2001, in Baraga County, Michigan, the Michigan State Police ("MSP") stopped Andrew A. Arch, a Shinnecock Nation Indian and president of an on-reservation Indian shipping company. Arch was driving a truck containing tobacco products from International Native Company (INC), an on-reservation Indian seller located in New York, to various on-reservation Indian buyers in Michigan, including plaintiff Chippewa Trading. Chippewa Trading is an Indian corporation chartered under the laws of the Keweenaw Bay Indian Community, a federally recognized Indian tribe located on the L'Anse Indian Reservation in Michigan.

After detaining Arch and the truck for investigation, the MSP seized the truck, its contents, Indian commercial papers and invoices, and various personal papers of Arch. This seizure was based on a violation of the TPTA, since none of the products in the truck bore a tobacco tax stamp as required by the State of Michigan.

The MSP then inventoried the contents of the truck and sent notice of the seizure to INC, who it believed to be the owner of the property. In fact, however, Chippewa Trading had pre-paid for its goods in advance of delivery. Notice of the seizure was not sent to Chippewa Trading or to any other buyer, although the name of each was listed on the invoices seized by the MSP.

The only party to file a demand for an administrative hearing to contest the seizure was INC, even though INC and plaintiff here share the same attorney and Chippewa Trading admits to having received actual notice of the seizure from Arch within four days after it occurred. *See* Affidavit of Joseph Warra P 6. At the conclusion of this hearing, which took place on October 17, 2001, the referee determined that the tobacco products seized from Arch's truck were contraband and recommended that they be forfeited to the state. The state issued this forfeiture order on October 30, 2001.

Within the period allowed for appeal of this order, Chippewa Trading appealed the forfeiture order in state circuit court, arguing that the notice provisions of the TPTA forfeiture scheme did not comport with the Due Process Clause of the Fourteenth Amendment, as they require notice only to the "person from whom the goods are seized" - not the actual owner. This action was dismissed on February 8, 2002, after the state court concluded that plaintiff lacked standing to proceed. The court reaffirmed its ruling on Chippewa Trading's motion for reconsideration. Two months later, plaintiff filed suit in this Court under 42 U.S.C. § 1983, seeking declaratory, preliminary, and injunctive relief. Plaintiff again argues that the notice provisions of the TPTA violate the Due Process Clause. In addition, plaintiff contends

that the TPTA as applied violates the Supremacy Clause and the Indian Commerce Clause.

II. Analysis

A. Standard of Review

When the defendant challenges subject matter jurisdiction through a motion to dismiss under Fed. R. Civ. P. 12(b)(1), the plaintiff bears the burden of establishing jurisdiction. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Specifically, the plaintiff must show that the complaint "alleges a claim under federal law, and that the claim is 'substantial.'" *Musson Theatrical, Inc. v. Federal Express Corp.*, 89 F.3d 1244, 1248 (6th Cir. 1996). The plaintiff's case will survive the motion to dismiss by showing "any arguable basis in law" for the claims set forth in the complaint. *Id.*

B. Analysis

Defendants' argue that this Court lacks subject matter jurisdiction on three grounds: 1) the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341; 2) principles of comity; and 3)

the Eleventh Amendment to the Constitution.[1] The comity issue will be considered first.

1. Comity

The concept of comity between federal courts and state governments, often referred to as "Our Federalism," *Fair Assessment in Real Estate Ass'n v. McNary,* 454 U.S. 100, 103, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981), represents:

> [A] system in which there is sensitivity to the legitimate interests of both State and National governments, and in which the National Government, anxious though it may be to protect federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Younger v. Harris, 401 U.S. 37, 44, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). This equitable principle "may ... counsel the

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[1] The Court initially notes that while the TIA, when applicable, divests this Court of subject matter jurisdiction to hear actions challenging the assessment or collection of state taxes, *see California v. Grace Brethren Church,* 457 U.S. 393, 408, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982), neither comity nor the Eleventh Amendment similarly divest the Court of subject matter jurisdiction. *See Wisconsin Dep't of Corrections v. Schacht,* 524 U.S. 381, 389, 118 S. Ct. 2047, 141 L. Ed. 2d 364 (1998) (holding that the Eleventh Amendment does not destroy original jurisdiction, it merely grants the State a legal power to assert a sovereign immunity defense should it choose to do so); *City of Columbus v. Leonard,* 443 U.S. 905, 907, 99 S. Ct. 3097, 61 L. Ed. 2d 872 (1979) (noting that principles of federal-state comity give rise to limitations on the exercise of federal jurisdiction over state laws and actions).

withholding of relief," *Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 525 n.33, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981), and is particularly applicable to the area of state taxation. *McNary,* 454 U.S. at 103.

The policies underlying the application of the comity doctrine in the area of state tax matters were explained by the Supreme Court in *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 63 S. Ct. 1070, , 87 L. Ed. 1407 (1943):

> It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states. "The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved." *Matthews v. Rogers, supra,* 284 U.S. 521, 525-526, 76 L. Ed. 447, 52 S. Ct. 217 (1932).

Id. at 298. These principles of comity pre-date and are substantially broader than the federal court deference

accorded under the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341. *See In re Gillis,* 836 F.2d 1001, 1006 (6th Cir. 1998) ("The priniciple of comity, which predated the [TIA], was not restricted by passage of the Act.").

In keeping with this breadth, comity operates to bar not only federal court injunctive and declaratory relief in state tax cases, but also suits for damages under 42 U.S.C. § 1983. *McNary,* 454 U.S. at 107. Furthermore, principles of comity apply equally to facial and as-applied constitutional challenges, since "the focus of whether comity bars federal court jurisdiction rests not on whether the state tax law is constitutionally challenged on its face or as applied, but rather on the concomitant respect that should be accorded state tax laws in federal court." *Winicki v. Mallard,* 615 F. Supp. 1244, 1248 (M.D. Fl. 1985), *aff'd* 783 F.2d 1567 (11th Cir. 1986), *cert.* denied 479 U.S. 815, 107 S. Ct. 70, 93 L. Ed. 2d 27 (1986).

In this case, plaintiff seeks a declaration that the forfeiture provisions of the TPTA violate the Due Process Clause of the Fourteenth Amendment. The forfeiture provisions challenged by plaintiff provide:

> As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, it know, an inventory statement of the property seized ... Within 10 business days after the date of service of the inventory statement ... the person from whom the property was seized or any person claiming an interest

> in the property may ... file with the commissioner a demand for a hearing ... The person or persons are entitled to appear before the department ...
>
> * * *
>
> If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file a demand with the commissioner for a hearing before the department, the property seized shall be considered forfeited to the state by operation of law ...
>
> * * *
>
> If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action shall be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property.

M.C.L. 429(3), (4). Plaintiff argues that these provisions provide inadequate notice to the actual owners of seized tobacco products, as they require that notice of the seizure be given only to "the person from whom the seizure was made." Plaintiff also seeks an injunction against further implementation of these provisions, as well as damages for tobacco products already seized under its authority. In its supplemental briefing, plaintiff also asserts as-applied challenges to the entire TPTA under the Supremacy Clause and the Indian Commerce Clause.

The Court finds that the relief requested, invalidation of and/or injunction against all or part of the TPTA, would unduly interfere with the fiscal operations and independence of the State of Michigan and its system of taxation. *See Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 298, 63 S. Ct. 1070, 87 L. Ed. 1407 (1943). Given this potential intrusion, principles of comity established in the cases cited *infra* dictate that the Court decline to hear plaintiff's claims. *See McNary,* 454 U.S. at 116 ("Taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal court. Such taxpayers must seek protection of their federal rights by state remedies.")

2. Adequate State Remedy

Plaintiff's claims will only be barred by principles of comity, however, if a "plain, adequate and complete" state remedy is available. *McNary,* 454 U.S. at 116.[2] This exception must be construed narrowly, *California v. Grace Brethren Church,* 457 U.S. 393, 413, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982), and is met if a state court remedy meets "certain minimal *procedural* criteria." *Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 512, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981) (emphasis in original). In other words, state remedies are plain, adequate, and complete "if they provide

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[2] The Supreme Court has noted that no significant differences exist between remedies which are "'plain, adequate, and complete,' as that phrase has been used in articulating the doctrine of equitable restraint, and those which are 'plain, speedy and efficient,' within the meaning of [the TIA]." *Fair Assessment in Real Estate Ass'n v. McNary,* 454 U.S. 100, 116 n.8, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981). Thus, cases under comity and the TIA are equally applicable to this analysis.

the taxpayer with a full hearing and judicial determination at which the taxpayer may raise any federal constitutional objections to the tax." *In Re Gillis,* 836 F.2d 1001, 1010 (6th Cir. 1988) (*citing Rosewell,* 450 U.S. at 514); *see also Bland v. McHann,* 463 F.2d 21, 29 (5th Cir. 1972)(noting that it is not required "that the state remedy be the best remedy available or even equal to or better than the remedy which might be available in the federal court").

In this case, at least two avenues for relief exist under state law. First, Michigan courts have long held that the state circuit courts have jurisdiction to entertain constitutional challenges to the validity of state tax laws, and may hold such statutes invalid. *See Meadowbrook Village Associates v. Auburn Hills,* 226 Mich. App. 594, 596, 574 N.W.2d 924 (1997); *Kostyu v. Department of Treasury,* 170 Mich. App. 123, 128, 427 N.W.2d 566 (1988). Moreover, claims under 42 U.S.C. § 1983 may be brought in the state court system. *Jones v. Powell,* 462 Mich. 329, 337, 612 N.W.2d 423 (2000). Adverse decisions of the circuit courts may be appealed to the state court of appeals, and, by leave, to the Michigan and United States Supreme Courts.

Second, the TPTA itself establishes a procedure for interested parties such as plaintiff to challenge the seizure and forfeiture of tobacco products by the state. See M.C.L. 205.429. Under these provisions, "the person from whom the property was seized or any person claiming an interest in the property" must file a demand for an administrative hearing within ten days after receiving notice of the seizure. M.C.L. 205.429(3). If forfeiture is ordered as a result of this hearing, aggrieved parties may appeal this order "to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture." M.C.L. 205.429(4).

Courts hearing such appeals "shall hear the action and determine the issues of fact and law involved in accordance with the rules of practice and procedure as in other in rem proceedings." *Id.; see also Keweenaw Bay Outfitters & Trading Post v. Department of Treasury,* 252 Mich. App. 95, 651 N.W.2d 138 (2002) (holding that circuit court proceedings on appeal from administrative determinations under the TPTA are governed by Rule 2 of the Michigan Court Rules, requiring discovery, motion practice, and possibly a trial).

In this case, plaintiff claims that the notice provisions of the TPTA are constitutionally inadequate on their face, as they require notice only to "the person from whom the seizure was made," M.C.L. 205.429(3), not to the actual owner of the products. Plaintiff further argues that as a result of these constitutionally infirm provisions, no "plain, adequate, and complete" remedy exists under state law. This argument must be rejected, however, as plaintiff admitted at oral argument [*15] and in its pleadings that it had *actual* notice of the seizure within four days after it occurred. *See* Affidavit of Joseph G. Warra ¶ 6 (attached as exhibit 5 to plaintiff's response to defendants' motion to dismiss).

Given this, plaintiff could have filed a demand for an administrative hearing under M.C.L. 205.429(3) and followed the procedures outlined above. *See Burris v. City of Little Rock,* 941 F.2d 717, 721 n.4 (8th Cir. 1991) ("The relevant question is whether the remedy was available originally."). That plaintiff failed to properly utilize this remedy, however, does not render it inadequate. *See Aluminum Co. of America v. Department of Treasury,* 522 F.2d 1120, 1121 (6th Cir. 1975); *Sacks Bros. Loan Co., Inc. v. Cunningham,* 578 F.2d 172, 176 (7th Cir. 1978)(noting that application of the TIA "depends on whether a state remedy was at some time

available to the taxpayer and the taxpayer's ... failure to use the remedy properly does not negate the existence of the remedy).[3]

Furthermore, contrary to plaintiff's assertion, the fact that Michigan courts are prohibited from issuing injunctions to stay the assessment or collection of a tax, M.C.L. 205.28(b), is irrelevant so long a taxpayer has the ability to challenge the constitutionality of the tax provision at issue. *California v. Grace Brethren Church,* 457 U.S. 393, 415-16, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982). Here, the Court finds that requirement to be met and further finds that the plaintiff had a "plain, adequate and complete" remedy under Michigan law. Given the availability of this remedy, the Court will dismiss plaintiff's claims without prejudice under principles of comity and need not reach the applicability of the Tax Injunction Act or the Eleventh Amendment.

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[3] The Court makes no findings as to whether plaintiff *still has* a state remedy in this case, although defendant has indicated that it would not challenge the filing of a state court action, and would indeed encourage that court to consider plaintiff's facial challenge on its merits. *See* Defendants' Supplemental Brief (dkt. # 25).

III. Conclusion

For the reasons set forth above, defendants' motion to dismiss will be granted and plaintiff's claims will be dismissed without prejudice. Furthermore, plaintiff's motions for preliminary injunction and summary judgment will de denied as moot. The Court will enter an order consistent with this opinion.

Date: March 28, 2003

/s/ _____
David W. McKeague
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Case No. 2:02-cv-68

[Filed March 28, 2003]

CHIPPEWA TRADING COMPANY, Plaintiff,	)
v.	)
JENNIFER M. GRANHOLM and JUNE SUMMER HAAS, Defendants.	)

DAVID W. McKEAGUE,
UNITED STATES DISTRICT JUDGE.

JUDGMENT ORDER

In accordance with the Court's opinion of even date,

IT IS ORDERED that defendants' motion to dismiss is **GRANTED** and plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**; and

IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction is **DENIED AS MOOT**; and

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is **DENIED AS MOOT.**

Date: March 28, 2003

/s/_____
David W. McKeague
UNITED STATES DISTRICT JUDGE

APPENDIX D

KEWEENAW BAY INDIAN COMMUNITY

RESOLUTION
#KB-591-97

WHEREAS, The Keweenaw Bay Indian Community is a federally recognized Indian tribe exercising inherent sovereign authority over its members and its territories. The Keweenaw Bay Indian Community has a reservation created pursuant to the 1854 Treaty with the Chippewa, 10 Stat. 1109; and

WHEREAS, The Keweenaw Bay Indian Community is organized pursuant to the provisions of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 476, with a Constitution and By-laws duly approved by the Secretary of the United States Department of the Interior on December 17, 1936; and

WHEREAS, Article VI, Section 1(o), of the Keweenaw Bay Indian Community Constitution authorizes the Keweenaw Bay Indian Community Tribal Council to charter subordinate organizations for economic purposes on the Community's reservation lands; and

WHEREAS, Community member Joseph Waara desires to incorporate the Chippewa Trading Company

pursuant to Community law in accordance with the Articles of Incorporation and By-Laws appended to this Resolution; and

WHEREAS, The Tribal Council has determined that granting a charter to the corporation referred to above will stimulate economic activity and foster entrepreneurship on the Reservation and therefore promotes the health, security and general welfare of the Keweenaw Bay Indian Community.

NOW THEREFORE, BE IT RESOLVED THAT,

The Keweenaw Bay Indian Community Tribal Council, pursuant to Article VI, Section 1(o) of the Keweenaw Bay Indian Community Constitution, hereby charters and incorporates the Chippewa Trading Company in accordance with the Articles of Incorporation and By-Laws appended hereto.

CERTIFICATION

The foregoing resolution was duly adopted by the Keweenaw Bay Indian Community Tribal Council with a quorum present during a special session on May 30, 1997 by a vote of 10 in favor, 0 Opposed, and 0 abstaining.

/s/_____

Ann Durant, Secretary
Tribal Council
Keweenaw Bay Indian Community

APPENDIX E

TREATY WITH THE CHIPPEWA, 1842

Oct. 4, 1842
7 Stat. 591
Proclamation, Mar. 23, 1843.

Articles of a treaty made and concluded at La Pointe of Lake Superior, in the Territory of Wisconsin, between Robert Stuart commissioner on the part of the United States, and the Chippewa Indians of the Mississippi, and Lake Superior, by their chiefs and headmen.

ARTICLE I

Land ceded to the United States.

The Chippewa Indians of the Mississippi and Lake Superior, cede to the United States all the country within the following boundaries; viz: beginning at the mouth of Chocolate river of Lake Superior; thence northwardly across said lake to intersect the boundary line between the United States and the Province of Canada; thence up said Lake Superior, to the mouth of the St. Louis, or Fond du Lac river (including all the islands in said lake); thence up said river to the American Fur Company's trading post, at the southwardly bend thereof, about 22 miles from its mouth; thence south to intersect the line of the treaty of 29th July 1837, with the Chippewas of the Mississippi; thence along said line to its southeastwardly extremity, near the Plover portage on the Wisconsin river; thence northeastwardly, along the boundary

line, between the Chippewas and Menomonees, to its eastern termination, (established by the treaty held with the Chippewas, Menomonees, and Winnebagoes, at Butte des Morts, August 11th 1827) on the Skoriawby river of Green Bay; thence northwardly to the source of Chocolate river; thence down said river to its mouth, the place of beginning; it being the intention of the parties to this treaty, to include in this cession, all the Chippewa lands eastwardly of the aforesaid line running from the American Fur Company's trading post on the Fond du Lac river to the intersection of the line of the treaty made with the Chippewas of the Mississippi July 19th, 1837.

ARTICLE II

Hunting ground.

The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress.

ARTICLE III

Unceded lands to be common property of the Indians.

It is agreed by the parties to this treaty, that whenever the Indians shall be required to remove from the ceded district, all the unceded lands belonging to the Indians of Fond du Lac, Sandy Lake, and Mississippi bands, shall be the common property and home of all the Indians, party to this treaty.

ARTICLE IV

Sums to be paid by United States for cession.

Indian debts to be paid by United States.

In consideration of the foregoing cession, the United States, engage to pay to the Chippewa Indians of the Mississippi, and Lake Superior, annually, for twenty-five years, twelve thousand five hundred (12,500) dollars, in specie, ten thousand five hundred (10,500) dollars in goods, two thousand (2,000) dollars in provisions and tobacco, two thousand (2,000) dollars for the support of two blacksmiths shops, (including pay of smiths and assistants, and iron steel &c.) one thousand (1,000) dollars for pay of two farmers, twelve hundred (1,200) for pay of two carpenters, and two thousand (2,000) dollars for the support of schools for the Indians party to this treaty; and further the United States engage to pay the sum of five thousand (5,000) dollars as an agricultural fund, to be expended under the direction of the Secretary of War. And also the sum of seventy-five thousand (75,000) dollars, shall be allowed for the full satisfaction of their debts within the ceded district, which shall be examined by the commissioner to this treaty, and the amount to be allowed decided upon by him, which shall appear in a schedule hereunto annexed. The United States shall pay the amount so allowed within three years.

Provision for half breeds.

Whereas the Indians have expressed a strong desire to have some provision made for their half breed relatives, therefore it is agreed, that fifteen thousand (15,000) dollars shall be paid to said Indians, next year, as a present, to be

disposed of, as they, together with their agent, shall determine in council.

ARTICLE V

Division of annuity.

Whereas, the whole country between Lake Superior and the Mississippi, has always been understood as belonging in common to the Chippewas, party to this treaty; and whereas the bands bordering on Lake Superior, have not been allowed to participate in the annuity payments of the treaty made with the Chippewas of the Mississippi, at St. Peters July 29th 1837, and whereas all the unceded lands belonging to the aforesaid Indians, are hereafter to be held in common, therefore, to remove all occasion for jealousy and discontent, it is agreed that all the annuity due by the said treaty, as also the annuity due by the present treaty, shall henceforth be equally divided among the Chippewas of the Mississippi and Lake Superior, party to this treaty, so that every person shall receive and equal share.

ARTICLE VI

Indians on mineral districts subject to removal.

The Indians residing on the Mineral district, shall be subject to removal therefrom at the pleasure of the President of the United States.

ARTICLE VII

Obligatory when ratified.

This treaty shall be obligatory upon the contracting parties when ratified by the President and Senate of the United States.

In testimony whereof the said Robert Stuart commissioner, on the part of the United States, and the chiefs and headmen of the Chippewa Indians of the Mississippi and Lake Superior, have hereunto set their hands, at La Pointe of Lake Superior, Wisconsin Territory this fourth day of October in the year of our Lord one thousand eight hundred and forty-two.

Robert Stuart, Commissioner
Jno. Hulbert, Secretary

Crow win River,	Po go ne gi shik,	1st chief
Do.	Son go com ick,	2d do.
Sandy Lake,	Ka non do ur nin zo,	1st do.
Do.	Na tum e gaw, bon,	2d do.
Gull Lake,	Ua bo jig,	1st do.
Do.	Pay pe si gon de bay,	2d do.
Red Ceder Lake,	Kui ui sen shis,	1st do.
Do.	Ott taw wance,	2d do.
Po ke gom maw,	Bai ie jig,	1st do.
Do.	Show ne aw,	2d do.
Wisconsin River,	Ki uen zi,	1st do.
Do.	Wi aw bis ke kut te way,	2d do.
Lac de Flambeau,	A pish ka go gi,	1st do.
Do.	May tock cus e quay,	2d do.
Do.	She maw gon e,	2d do.
Lake Bands,	Ki ji ua be she shi,	1st do.

Do.	Ke kon o tum,	2d do.
Fon du Lac,	Shin goob,	1st do.
Do.	Na gan nab,	2d do.
Do.	Mong o zet,	2d do.
La Pointe,	Gitchl walsky,	1st do.
Do.	Mi zi,	2d do.
Do.	Ta qua gone e,	2d do.
Onlonagan,	O kon di kan,	1st do.
Do.	Kis ke taw wac,	2d do.
Ance,	Pe na shi,	1st do.
Do.	Guck we san sish,	2d do.
Vieux Dessert,	Ka she osh e,	1st do.
Do.	Medge waw gwaw wot,	2d do.
Mille Lac,	Ne qua ne be,	1st do.
Do.	Ua shash ko kum,	2d do.
Do.	No din,	2d do.
St. Croix,	Be zhi ki,	1st do.
Do.	Ka bi na be,	2d do.
Do.	Ai aw bens,	2d do.
Snake River,	Sha go bi,	1st do.
Chippewa River,	Ua be she shi,	1st do.
	Que way zhan sis,	2d do.
Lac Courtulle,	Ne na pang eb,	1st do.
Do.	Be bo kon uen,	2d do.
Do.	Ki uen zi.	2d do.

In presence of—

Henry Blanchford, interpreter.	Z. Platt.
Samuel Ashmuu, interpreter.	O. H. Beaulieau.
Justin Rice.	L. T. Jamison.
Charles H. Oakes.	James P. Scott.
William A. Altkin.	Cyrus Mendenhall.
William Brewster.	L. M. Warren.
Charles M. Borup.	

(To the Indian names are subjoined marks.)

SEE FOLD OUT EXHIBIT

TREATY WITH THE CHIPPEWA, 1842

Schedule of debts of Indians to be paid.

Schedule of claims examined and allowed by Robert Stuart, commissioner, under the treaty with the Chippewa Indians of the Mississippi and Lake Superior, concluded at La Pointe, October 4th 1842, setting forth the names of claimants, and their proportion of allowance of the seventy-five thousand dollars provided in the fourth article of the aforesaid treaty, for the full satisfaction of their debts, as follows:

No. of claim.	Name of claimant.		Proportion of $75,000, set apart in 4th article of treaty.
1	Edward F. Ely		$60 20
2	Z. Platt, esq., attorney for George Berkett		434 67
3	Cleveland North Lake Co		1,485 67
4	Abraham W. Williams		75 00
5	William Brewster		2,052 67
	This claim to be paid as follows, viz:		
	William Brewster, or order	$1,929 77	
	Charles W. Borup, or order	122 90	
		$2,052 67	
6	George Copway		61 67
7	John Kahbege		97 56
8	Alixee Carpantier		26 56
9	John W. Bell		188 18
10	Antoine Picard		6 46
11	Michael Brisette		182 42
12	François Dajaddon		801 43
13	Pierre C. Duvernay		1,101 00
14	Jean Bte. Basinet		825 48
15	John Holley		60 00
16	François Charette		224 93
17	Clement H. Beaulieu, agent for the estate of Basil Beaulieu, dec'd		586 84
18	Francois St. Jean and George Ronga		866 34
19	Louis Ladebauche		872 93
20	Peter Crebassa		499 27
21	B. T. Kavanaugh		616 82
22	Augustin Goslin		160 00
23	American Fur Company		13,363 90
	This claim to be paid as follows, viz:		
	American Fur Company	12,553 10	
	Charles W. Borup	809 20	
		$13,363 90	
24	William A. Aitken		935 67
25	James P. Scott		73 41
26	Augustin Bellanger		192 35
27	Louis Corbin		12 87
28	Alexis Corbin		884 08
29	George Johnston		83 24
30	Z. Platt, esq., attorney for Sam'l Ashman		1,771 42
31	Z. Platt, esq., Attorney for Wm. Johnson		320 27
32	Z. Platt, esq., attorney for estate of Dan'l Dingley		1,991 62
33	Lyman M. Warren		1,366 05
34	Estate of Michael Cadotte, *disallowed.*		
35	Z. Platt, esq., attorney for estate of B. Rotsain		949 12
36	Joseph Dufault		144 23
37	Z. Platt, esq., attorney for Antoine Maes		170 35
38	Michael Cadotte		298 00
39	Z. Platt, esq., att'y for François Gauthier		147 05
40	Z. Platt, esq., att'y for Joseph Gauthier		614 80
41	Z. Platt, esq., attorney for J. B. Ucalle		64 78
42	Jean Bte. Corbin		441 00
43	John Hulbert		230 18
44	Jean Bte. Couvellion		18 80
45	Nicholas De Couteau, *withdrawn.*		
46	Pierre Cotté		732 00
47	W. H. Brockway and Henry Holt, executors to the estate of John Holliday, dec'd.		2,197 10
48	John Jacob Astor		37,904 98
	This claim to be paid as follows, viz:		
	Charles W. Borup	1,676 90	
	Z. Platt, esq	2,611 80	
	John Jacob Astor	33,616 28	
		$37,904 98	
49	Z. Platt, esq., attorney for Thos. Connor		1,113 88
50	Charles H. Oakes		4,809 21
51	Z. Platt, esq., attorney for Wm. Morrison		1,674 70
52	Z. Platt, esq., att'y for Isaac Butterfield		1,276 58
53	J. B. Van Rensselaer		62 09
54	William Brewster and James W. Abbot		2,057 10
	The parties to this claim request no payment be made to either without their joint consent, or until a decision of the case be had, in a court of justice.		
55	William Bell		17 82
			$75,000 00

Robert Stuart, Commissioner.
Jno. Hulbert, Secretary.

APPENDIX F

CORPORATE CHARTER OF THE KEWEENAW BAY INDIAN COMMUNITY OF THE L'ANSE RESERVATION

A Federal Corporation Chartered Under the Act of June 18, 1934

Whereas, the Keweenaw Bay Indian Community, consisting of the L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation in Michigan is a recognized Indian tribe organized under a Constitution and By-laws ratified by the Tribe on November 7, 1936, and approved by the Secretary of the Interior on December 17, 1936, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378); and

Whereas, more than one-third of the adult members of the Keweenaw Bay Indian Community have petitioned that a Charter of Incorporation be granted to such Community, subject to ratification by a vote of the adult Indians living on the Reservation;

Now, therefore, I.T.A. Walters, Acting Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934 (48 Stat. 984), do hereby issue and submit this Charter of incorporation to the Keweenaw Bay Indian Community of the L'Anse Reservation to be effective from and after such time as it may be ratified by a majority

vote in an election in which at least thirty per cent of the adult Indians living on the Reservation shall vote.

Corporate Existence

1. In order to further the economic development of the Keweenaw Bay Indian Community of the L'Anse Reservation in Michigan by conferring upon the said Community certain rights, powers, privileges and immunities; to secure for the members of the Community the means of an assured economic independence; and to provide for the proper exercise by the Community of various functions heretofore performed by the Department of the Interior, the aforesaid community is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Keweenaw Bay Indian Community."

Perpetual Succession, Membership

2. The Keweenaw Bay Indian Community shall, as a Federal Corporation, have perpetual succession.

3. The Keweenaw Bay Indian Community shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Community, as provided by is duly ratified and approved Constitution and By-laws.

Management

4. The Tribal Council of the Keweenaw Bay Indian Community established in accordance with the said Constitution and By-laws of the Community, shall exercise all the corporate powers hereinafter enumerated.

Corporate Powers

5. The Community, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Community, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal Constitution and By-laws:

(a) To adopt, use, and alter at its pleasure a corporate seal.

(b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

(1) No sale or mortgage may be made of any land, or interests in land, now or hereafter held by the Community within the boundaries of the L'Anse Reservation.

(2) No mortgage may be made by the Community of any standing timber on any land now or hereafter held by the Community within the boundaries of the L'Anse Reservation.

(3) Leases or permits (which terms shall not include land assignments to members of the Community) may be made, on any land now or hereafter owned by the Community, for a term of one year, without the approval of the Secretary of the Interior; timber sale contracts and leases may be made for a term not to exceed five years, subject to the approval of the Secretary of the Interior or

his duly authorized representative: **Provided**, That leases requiring substantial improvements of the land may be made for longer periods than five years, when authorized by law.

(4) No action shall be taken by or in behalf of the Community which in any way operates to destroy or injure the tribal timber, or other natural resources of the L'Anse Reservation. All leases, permits, and timber sale contracts relating to the use of tribal timber lands shall conform to regulations of the Secretary of the Interior authorized by Section 6 of the Act of June 18, 1934, with respect to sustained yield forestry management, and other matters therein specified. Conformity to such regulations shall be made a condition of any such lease, permit, or timber sale contract, whether or not such agreement requires the approval of the Secretary of the Interior, and violation of such condition shall render the agreement revocable, in the discretion of the Secretary of the Interior.

(5) No distribution of corporate property to members shall be made except out of net income.

(c) To issue certificates of interest in corporate property in exchange for restricted Indian lands, the forms for such certificates to be approved by the Secretary of the Interior.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of June 18, 1934 (48 Stat. 984), or from any other governmental agency, or from any member or

association of members of the Community, or from any other source, and to use such funds directly for productive community enterprises, or to loan money thus borrowed to individual members or associations of members of the Community: **Provided**, That the amount of indebtedness to which the Community may subject itself, other than indebtedness to the Indian Credit Fund, shall not exceed $5,000, except with the express approval of the Secretary of the Interior.

(e) To engage in any business that will further the economic well-being of the members of the Community or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this Charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this Charter, with any person, association, or corporation, with any municipality or any county, with the United States or the State of Michigan: **Provided**, That any contract involving payment of money by corporation in excess of $1,000 in any one fiscal year shall be effective only when approved by the Secretary of the Interior or his duly authorized representative.

(g) To pledge or assign chattels or future tribal income due or to become due to the Community: **Provided**, That any such assignment of community income, other than an assignment to the United States, shall not extend more than five years from the date of execution: **Provided further**, That no such assignment of community income, except assignments made to the United States, shall exceed one-half the

net income of the Community from any one source: **And provided further**, That any such pledges or assignments shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(h) To deposit corporate funds, from whatever source derived, in any national or state bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the Postal Savings Bank or with a bonded disbursing officer of the United States to the credit of the corporation.

(i) To sue and be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and be sued shall not be deemed a consent by the said Community or by the United States to the levy of any judgement, lien or attachment upon the property of the Community other than income or chattels specially pledged or assigned.

Termination of Supervisory Powers

6. Upon the request of the Tribal Council for the termination of any supervisory power reserved to the Secretary of the Interior under sections 5(b)(3), 5(c), 5(d), 5(f), 5(g), 5(h), and Section 9 of this Charter, the Secretary of the Interior, if he shall approve such request, shall thereupon submit the question of such termination to the Community for referendum. The termination shall be effective upon ratification by a majority vote at an election in which at least thirty per cent of the adult members of the Community residing on the reservation shall vote. If at any time after five

years from the effective date of this Charter, such request shall be made and the Secretary shall disapprove it or fail to approve or disapprove it within ninety days after its receipt, the question of the termination of any such power may then be submitted by the Secretary of the Interior or by the Tribal Council to popular referendum of the adult members of the Community actually living within the reservation and if the termination is approved by two-thirds of the eligible voters, shall be effective.

Corporate Property

7. No property rights of the Keweenaw Bay Indian Community consisting of the L'Anse, Lac Vieux Desert and Ontonogon Bands of Chippewa Indians as heretofore constituted, shall be in any way impaired by anything contained in this Carter, and the Community ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually owned property of members of the Community shall not be subject to any corporate debts or liabilities, without such owners' consent. Any existing lawful debts of the Community shall continue in force, except as such debts may be satisfied or cancelled pursuant to law.

Reserve Fund

8. Forty per cent of net income from corporate enterprises shall be placed in a reserve fund, annually, until said reserve funds equals not less than 25 per cent of the capital investment in such corporate enterprise. Thereafter the amounts of net income to be devoted to the reserve fund may be optional, except that amounts expended therefrom shall be replaced in the same manner that the fund was created. This fund shall

be used only for repairs, replacements, improvements, and expansion of corporate enterprises.

Corporate Dividends

9. The Community may issue to each of its members a nontransferable certificate of interest in corporate property and corporate enterprises evidencing the equal share of each of such members of the Community in the corporate assets of the Community and may make a dividend distribution among such members of profits of corporate enterprises over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the cost of public enterprise, the expenses of community government, the needs of charity, or other corporate purposes. No such distribution of profits, amounting to a distribution of more than one-half of the accrued surplus, shall be made without the approval of the Secretary of the Interior. No distribution of the financial assets of the Community shall be made except as provided herein or as authorized by Congress.

Corporate Accounts

10. The officers of the Community shall maintain accurate and complete public accounts of the financial affairs of the Community, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Community to the Commissioner of Indian Affairs.

Amendments

11. This Charter shall not be revoked or surrendered except by Act of Congress, but amendments may be proposed by resolutions of the Tribal Council, which, if approved by the

Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members of the Community residing on the reservation at a popular referendum in which at least 30 per cent of the eligible voters shall vote.

12. This Charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Keweenaw Bay Indian Community residing on the L'Anse Reservation, provided at least 30 per cent of the eligible voters shall vote, such ratification to be formally certified by the Superintendent of the Great Lakes Agency and the President and Secretary of the Tribal Council of the Keweenaw Bay Indian Community.

Submitted by the Acting Secretary of the Interior for ratification by the Keweenaw Bay Indian Community of the L'Anse Reservation in a popular referendum to be held on July 17, 1937.

T.A. Walters,
Acting Secretary of the Interior

Washington, D.C., June 26, 1937

CERTIFICATION

Pursuant to Section 17 of the Act of June 18, 1934 (48 Stat. 984), this Charter, issued on June 27, 1937 by the Acting Secretary of the Interior to the Keweenaw Bay Indian Community of the L'Anse Reservation, Michigan, was duly submitted for ratification to the adult Indians living on the reservation and was on July 17, 1937 duly adopted by a vote of 226 for, and 7 against, in an election in which over thirty per cent of those entitled to vote cast their ballots.

Charles Picard,
President of the Tribal Council
of the Keweenaw Bay Indian Community

James R. Johnston,
Secretary of the Tribal Council
of the Keweenaw Bay Indian Community

J.C. Cavill,
Superintendent of the Great Lakes Agency,
by G.J. Baber

APPENDIX G

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

CONSTITUTION AND BY-LAWS OF THE KEWEENAW BAY INDIAN COMMUNITY MICHIGAN

Approved December 17, 1936

PREAMBLE

We, the L'Anse Lac Vieux Desert and Ontonagon Bands of Chippewa Indians, residing within the original confines of the L'Anse Reservation, in order to organize as a tribe for the common welfare of ourselves and our posterity, to insure domestic tranquility, to conserve and develop our natural resources, to form business and other organizations, to establish a credit system, to enjoy certain rights of home rule, do ordain and establish this Constitution and By-laws, for our community which shall be known as the Keweenaw Bay Indian Community.

ARTICLE I - TERRITORY

The territorial jurisdiction of this Constitution shall embrace the land within the original boundary lines of the L'Anse Reservation as defined pursuant to treaty dated September 30, 1854, (110 Stat. 1109), and any and all future additions of land acquired within or without said boundary

line by the Secretary of the Interior or by the Tribe, except as otherwise provided by law.

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Keweenaw Bay Indian Community shall consist of the following:

(a) The bona fide enrolled members of the L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians as shown on any of the allotment rolls of the L'Anse, Lac Vieux Desert and Ontonagon Reservations, and their descendants who were residing within the limits of the L'Anse Reservation of June 1, 1934.

(b) Every child of one-quarter or more Indian blood, born hereafter to any member of the Keweenaw Bay Indian Community, provided such member is a resident of the Reservation at the time of birth of said child, and every child both of whose parents are members of the Community.

Sec. 2. The Tribal Council shall have power to enact ordinances subject to review by the Secretary of the Interior governing the adoption of members for the Keweenaw Bay Indian Community. Other Indians not now members of this Reservation who desire to affiliate with the Community may upon written application be admitted by a majority vote of the membership, and shall thereupon have a right to vote on matters pertaining to the Community, but shall be excluded from participating in any rights or claim arising out of treaties, and from the right to hold office in the Community. The same limitations are to be extended to the children of adopted members, except where one parent is a member by birth of the Community.

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Keweenaw Bay Indian Community shall be the Tribal Council.

Sec. 2. The Tribal Council shall consist of twelve councilmen to be elected by popular ballot as follows: Six councilmen from the L'Anse district and six councilmen from the Baraga district.

Sec. 3. The Tribal Council shall have power to change the districts and the representation from each district based on community population, such change to be made by ordinance, but the total number of delegates as provided for in Section 2, Article III, of this Constitution, shall not be changed.

Sec. 4. After each popular election the Tribal Council shall elect from within its own number a President, a Vice President, a Secretary, an Assistant Secretary, a Treasurer and such other officers and committees as may be deemed necessary. The five officers named and so elected from the Tribal Council shall be known as the Executive Council.

Sec. 5. The Tribal Council of the Keweenaw Bay Indian Community shall be the sole judge of the qualifications of its members.

ARTICLE IV - NOMINATIONS AND ELECTIONS

Section 1. The first election of a Tribal Council under this Constitution shall be called and supervised by present business and advisory committee within thirty days after the ratification and approval of this Constitution and thereafter elections shall be held each year, on the third Saturday prior to the expiration of office of the members of the Tribal Council.

Sec. 2. At the first election four councilmen shall be elected for a period of one year, and four councilmen for a period of two years, and four councilmen for a period of three years; and after the first election each councilmen shall be elected for a period of three years.

Sec. 3. The Tribal Council or an election board appointed by the Tribal Council shall determine rules and regulations governing elections.

Sec. 4. The L'Anse and Baraga districts shall formulate their own rules and regulations regarding nominations and candidates for the Tribal Council, such nominees being elected by majority vote of the entire tribe. Each district will be required to file the names of proposed candidates with the Tribal Secretary at least fifteen days prior to election. It shall be the duty of the Secretary of the Tribal Council to post at least ten days before election the names of all candidates for the Council.

Sec. 5. The Tribal Council or a board appointed by the Council shall certify to the elections of the members of the Council immediately after the election returns.

Sec. 6. Any member of the Keweenaw Bay Indian Community who is twenty-one years of age or over and who maintains residence on the reservation, and presents himself at the polls on election day, shall be entitled to vote in the district in which he resides.

Sec. 7. Any enrolled member of the Keweenaw Bay Indian Community, twenty-five years of age or over and who is at least one-fourth degree Indian blood and shall have resided within the district from which elected for at least one year

immediately preceding this nomination, shall be eligible for election to the Tribal Council.

ARTICLE V - VACANCIES AND REMOVAL FROM OFFICE

Section 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor from the district which has lost a representative to fille the office until the next general election, when a successor shall be elected for the unexpired term, provided that the person chosen to fill such vacancy shall be qualified.

Sec. 2 Any councilman who is proven guilty of improper conduct or gross neglect of duty, may be expelled from the Council under the following procedure:

Should a complaint in writing from fifty members of the Tribe against a member of the Tribal Council be presented to the Council, it shall be the duty of the Tribal Council, if the grounds for such complaint is considered of sufficient merit, to appoint a committee of five members of the Tribe, independent of its own membership and those making such complaints, to hold a public hearing and make written report to the Tribal Council of its findings, a copy of such report to be furnished the accused. Upon receipt of such report by the Tribal Council, it shall meet in executive session to consider such report, grant a hearing and hear testimony of the accused. The Tribal Council may expel a member found guilty of gross neglect of duty or improper conduct by a two-thirds vote.

ARTICLE VI - POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached By-laws:

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wild life and natural resources of the Community, to cultivate Indian arts, crafts and culture, to administer charity, to protect the health, security, and the general welfare of the Keweenaw Bay Indian Community.

(b) To employ legal counsel for the protection and advancement of the rights of the Keweenaw Bay Indian Community and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To negotiate with the Federal, State, and local governments on behalf of the Community and to advise and consult with the representatives of the Department of the Government of the United States on all matters affecting the affairs of the Keweenaw Bay Indian Community.

(d) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, and tribal assets, which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, provided that no tribal lands shall be sold or encumbered, or leased for a period in excess of five years, except for governmental purposes, and except that mineral

leases and leases to associations, or members, may be made for such longer periods as may be authorized by law.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates, or Federal projects, for the benefit of the Keweenaw Bay Indian Community, prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(f) To manage all economic affairs and enterprises of the Keweenaw Bay Indian Community in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Keweenaw Bay Indian Community in conformity with Article VII of this Constitution.

(h) To appropriate for tribal use any available tribal funds, provided, that any appropriation in excess of $10,000 in any one fiscal year shall be of no effect until approved at a popular referendum.

(i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for taxes, assessments, or license fees upon non-members doing business within the reservation, or obtaining special rights or privileges, and such ordinances may also be applied to members of the Keweenaw Bay Indian Community, without such review, provided such ordinances have been approved by a referendum of the Keweenaw Bay Indian Community.

(j) To exclude from the restricted lands of the Reservation persons not legally entitled to reside thereon,

under ordinances which shall be subject to review by the Secretary of the Interior.

(k) To enact resolutions or ordinances not inconsistent with Article II of this Constitution governing adoptions and abandonment of membership, subject to review by the Secretary of the Interior.

(l) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior governing the conduct of members of the Keweenaw Bay Indian community, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and a definition of its powers and duties.

(m) To purchase land from members of the Keweenaw Bay Indian Community for public purposes under condemnation proceedings in courts of competent jurisdiction.

(n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Keweenaw Bay Indian Community by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting non-members shall be subject to review by the Secretary of the Interior.

(o) To charter subordinate organizations for economic purposes, and to regulate the activities of such organizations by ordinances which shall be subject to review by the Secretary of the Interior.

(p) To regulate the inheritance of real and personal property, other than alotted lands, within the Keweenaw Bay

Indian Community, subject to review by the Secretary of the Interior.

(q) To regulate the domestic relations of members of the Keweenaw Bay Indian Community.

(r) To recommend and provide for the appointment of guardians for orphans, minor members of the Keweenaw Bay Indian Community, and mental incompetents, subject to review by the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Tribe or Tribal Council for this purpose.

(s) To create and maintain a Community fund by accepting grants or donations from any person, State, or the United States, or by tribal enterprises.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the Keweenaw Bay Indian Community, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

Sec. 2. Any resolution or ordinance, which, by the terms of this Constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation, who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety days from the date of enactment, rescind said

ordinance or resolution for any cause, by notifying the council of such action. If the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may within ninety days from its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

Sec. 3. The Council of Keweenaw Bay Indian Community may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior, or by Congress, or by the State Government, or by any member of the Keweenaw Bay Indian Community.

Sec. 4. Any rights and powers heretofore vested in the L'Anse, Lac Vieux Desert, and Ontonagon Bands of Chippewa Indians, residing within the original confines of the L'Anse Reservation, but not expressly referred to in this Constitution shall not be abridged by this article but may be exercised by the members of the Keweenaw Bay Indian Community through the adoption of appropriate By-laws and constitutional amendments.

ARTICLE VII - LAND

Section 1. **Alloted Lands**. - Alloted lands, including heirship lands, within the L'Anse Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the Federal or State

Government, or by the Community itself. It is further recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Community. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land, may with the approval of the Secretary of the Interior, voluntarily convey his land to the Keweenaw Bay Indian Community either in exchange for a money payment or in exchange for an assignment covering the same land or other land hereinafter provided.

Sec. 2. **Tribal lands**. - The unalloted lands of the Community, and all lands which may hereafter be acquired by the Community or by the United States in trust for the Community shall be held as tribal lands, and no part of such land shall be mortgaged or sold. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Community, or leases, or otherwise used by the Community, as hereinafter provided.

Sec 3. **Leasing of tribal lands**. - Tribal lands may be [illegible] by the Tribal Council, with the approval of the Secretary of Interior, for such periods of time as are permitted by law.

In the leasing of lands preference shall be given, first, to Indian cooperative associations, and, secondly to individual Indians who are members of the Community. No lease of tribal lands to non-members shall be made by the Tribal

Council unless it shall appear that no Indian cooperative association or individual member of the Community is able and willing to use the land and to pay a reasonable fee for such use.

All action of the Tribal Council in the regulation and leasing of tribal land shall be consistent with the rules and regulations prescribed by the Secretary of the Interior in accordance with section 6 of the Act of June 18, 1934.

Sec. 4. **Grant of "standard assignments."** - In any assignment of tribal lands which are now owned by the Community or which hereafter may be aquired for the Community by the United States or purchased by the Community out of tribal funds, preference shall be given, first, to heads of families which are entirely landless, and, secondly, to heads of families which have no alloted lands or interests in allotted lands but shall have already received assignments consisting of less than an economic unit of agricultural land, or other land or interests in land of equal value, such economic unit to be determined from time to time by the Tribal Council.

No alotted member of the Community who may hereafter have the restrictions upon his land removed and whose land may thereafter be alienated shall be entitled to receive an assignment of land as a landless Indian. The Tribal Council, may, if it sees fit, charge a fee of not to exceed five dollars ($5.00) on approval of an assignment made under this section.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians, and shall be known as standard assignments.

If any member of the Community holding a standard assignment of land shall for a period of one year fail to use the land so assigned or shall use such land for any unlawful purpose such assignment may be cancelled by the Tribal Council after due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provisions of section 4, of this article.

Upon the death of any Indian holding a standard assignment his heirs or other individuals designated by him, by will or written request, shall have a preference in reassignment of the land, provided such persons are members of the Community who would be eligible to receive a standard assignment.

Sec. 6. **Grant of "exchange assignments."** - Any member of the Community who owns an allotment or any share of heirship land or deeded land may voluntarily convey his interest in such land to the Community exchange for an assignment to the same land or other land of equal value. If the assignee prefers he may receive, in lieu of a specific tract of land, a proportionate share in a larger unit of land or other interest.

Assignment under this section shall be known as exchange assignments.

Sec. 7. **Leasing of exchange assignments**. - Exchange assignments may be used by the assignee or leased by him to Indian cooperative associations, to individual members of the Keweenaw Bay Indian Community, or, if no individual Indian or Indian cooperative association is able and willing to rent the land at a reasonable fee, such assignments may be leased to non-Indians in the same manner as allotted lands.

Sec. 8. **Inheritance of "exchange assignments."** - Upon the death of the holder of any exchange assignment, such land shall be reassigned by the Tribal Council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heirs or devisees who are not members of the Keweenaw Bay Indian Community, except that a life assignment may be made to the surviving widower or widow of the holder of an assignment.

(b) Such lands may not be reassigned to any heir or devisee who already holds more than an economic unit of land or interests in land, such unit to be determined from time to time by the Tribal Council.

(c) Such lands may not be subdivided into units too small for economic use as may be determined by the Tribal Council, except that land used for buildings or other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the Tribal Council shall issue to the eligible heirs or devisees, interests in tribal lands of the same value as their interests in the assignment of the decedent.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be legible for reassignment in accordance with the provisions of section 4 of this article.

Sec. 9. **Use of unassigned community land**. - Community land which is not assigned, including community timber reserves, shall be managed by the Tribal Council for the benefit of the members of the entire Community, and any cash income derived from such land shall accrue to the benefit of the Community as a whole.

Sec. 10. **Inheritance of improvements**. - Improvements of any character made upon assigned land may be bequeathed to and inherited by members of the Community or otherwise disposed of under such regulations as the Tribal Council shall provide. No permanent improvements shall be removed from the land without the consent of the Tribal Council.

Sec. 11. **Exchange of assignment**. - Assignments may not be exchanged between members of the Community by common consent in such manner as the Tribal Council shall designate.

Sec. 12. **Use of community funds**. Community funds may be used with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

(a) Land within the L'Anse Reservation or adjacent to the boundaries thereof which is not now in Indian ownership may be purchased by or for the Community.

(b) Restricted land, which is in heirship status at the time of the adoption and approval of this Constitution, may be purchased by or for the Community, with the consent of all the adult heirs, and the legal guardians of minor heirs, payment thereof to be made as may be agreed upon.

(c) Land owned by any member of the Keweenaw Bay Indian Community who is over the age of 60 years, or who is physically incapacitated, may be transferred by its owner to the Keweenaw Bay Indian Community in exchange for a pension of not more than twice the annual rental value of the land for the life of the pensioner, to be paid out of available tribal funds.

(d) Land in excess of an economic unit as determined by the Tribal Council owned by any member of the Keweenaw Bay Indian Community may be purchased by or for the Community with the consent of the owner, payments to be made under such terms as may be agreed upon.

(e) Land owned by any member of the Keweenaw Bay Indian Community who desires to leave the reservation permanently may be purchased by the Keweenaw Bay Indian Community, under such terms as may be agreed upon.

Sec. 13. **Method of making assignments**. - Applications for assignments shall be filed with the Secretary of the Council, and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit.

Notices of all applications received by the Secretary shall be posted by him in the agency office and in at least three conspicuous places in the district in which the land is located for not less than twenty (20) days before action is taken by the Council. Any member of the Community wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Council, and may if he so desires appear at or before the Council to present evidence. The Secretary of the Council shall furnish the Superintendent or other offices in charge of the agency a complete record of all action taken by the Council on applications for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the Community.

The Tribal Council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

ARTICLE VIII - AMENDMENTS

Section 1. This Constitution and By-laws may be amended by a majority vote of the qualified voters of the Community voting at an election called for that purpose by the Secretary of the Interior provided that at least thirty (30) per cent of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon presentation of a petition signed by two-thirds of the eligible voters of the Community.

BY-LAWS OF THE KEWEENAW BAY INDIAN COMMUNITY

ARTICLE I - DUTIES OF OFFICERS

Section 1. The President of the Tribal Council shall preside at all meetings of the Council. He shall at all times have general supervision of the affairs of the Tribal Council and such matters as naturally pertain to the general welfare of the Community. It shall also be the duty of the President to countersign all checks drawn against any funds of the organization by the Treasurer. He shall be ex-officio member of all subordinate boards and committees.

Sec. 2. In the absence of the President, the Vice President shall preside at all meetings of the Tribal Council and shall act in his stead in all matters pertaining to the office of President.

Sec. 3. The Secretary shall keep an accurate record of all proceedings of the Tribal Council and furnish copies thereof to the Superintendent of the jurisdiction. He shall attend to the keeping of the official records of the Tribal Council and shall be responsible for the prompt and efficient handling of all correspondence pertaining to the business of the Tribal Council. All official records of the Tribal Secretary shall be open to inspection by the members of the Community at all times. The Secretary shall be ex-officio member of all subordinate boards and committees.

Sec. 4. The Assistant Secretary shall perform all duties that pertain to the office of the Secretary whenever the Secretary needs assistance.

Sec. 5. The Treasurer of the Tribal Council shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Council, whether they be tribal funds or such funds for which the Council is acting as trustee or custodian. He shall deposit all funds in such depository as the Council shall direct, and shall make and preserve a faithful record of such funds and shall report on all funds in his possession and custody at each regular meeting of the Tribal Council, and at such other times as required by the Tribal Council, or the Executive Council. He shall not pay out or otherwise disburse and funds in his possession or custody except in accordance with a resolution passed by the Council.

The Treasurer shall be required to give a bond satisfactory to the Council and to the Commissioner of Indian Affairs. The books of the Treasurer shall be audited at least once a year by direction of the Tribal Council.

Sec. 6. The subordinate officers, boards and committees of the Tribal Council shall perform such duties as the Tribal Council shall, by resolution, from time to time provide.

ARTICLE II - OATH

Section 1. All officers when elected shall be duly installed and subscribe to an oath of office to support the Constitution of the United States and this Constitution. Such officers may be sworn in by any officer qualified to administer an oath.

ARTICLE III - MEETINGS

Section 1. Stated meetings of the Tribal Council shall be held the first Saturday of January, April, July, and October, and at such other times as the Council may by ordinance provide. Called meetings shall be held at the discretion of the President, or upon request of three members of the Tribal Council. Three days' written notice shall be given to all Council members.

Sec. 2. Seven members shall constitute a quorum.

Sec. 3. The Tribal Council shall prescribe such rules of order for its meeting as it desires.

Sec. 4. The meetings of the Tribal Council except executive sessions shall be public to the Community.

ARTICLE IV - ADOPTION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws, when ratified by a majority vote of the qualified voters of the L'Anse Lac Vieux Desert, and Ontonagon Bands of Chippewa Indians, residing

within the original confines of the L'Anse Reservation, voting at a special election called for the purpose by the Secretary of the Interior, provided that at least thirty per cent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior, and if approved, shall be effective from the date of the approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved October 15, 1936, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the L'Anse Lac Vieux Desert, and Ontonagon Bands of Chippewa Indians, residing within the original confines of the L'Anse Reservation, and was on November 7, 1936, duly adopted by a vote of 239 for, and 18 against, in an election in which over 30 per cent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

John E. Thomas,
Chairman of Election Board
William Curtis,
Secretary of Election Board

J.C. Cavill,
Superintendent

I, Harold L. Ickes, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of Jule 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and By-laws of the Keweenaw Bay Indian Community.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of said Constitution or By-laws are hereby declared inapplicable to these Indians.

All officers and employees of the Interior Department are ordered to abide by the provisions of said Constitution and By-laws.

Approval recommended December 9, 1936.

William Zimmerman, Jr.,
Assistant Commissioner of Indian Affairs

Harold L. Ickes,
Secretary of the Interior

Washington, D.C., December 17, 1936.

APPENDIX H

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I. LEGISLATIVE DEPARTMENT

USCS Const. Art. I, § 8, Cl 3 (2004)

Sec. 8, Cl 3. Power of Congress to regulate commerce.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

ARTICLE VI. MISCELLANEOUS PROVISIONS

USCS Const. Art. VI, Cl. 2 (2004)

Cl. 2. Supreme law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT 14

USCS Const. Amend. 14, § 1 (2004)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV. JURISDICTION AND VENUE
CHAPTER 85. DISTRICT COURTS; JURISDICTION

28 USCS § 1362 (2004)

§ 1362. Indian tribes

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.